

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 2034 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAFUL C ACHARYA

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner
MR PB BHATT APP for Respondent No. 1
MR CH VORA for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/12/98

ORAL JUDGEMENT

Heard learned advocates Mr. B.D Karia for the applicant and Mr. C.H Vora for the respondent No. 2 and learned APP Mr. P.B Bhatt for the respondent No. 1-State.

2. This application under Section 482 CrPC has been

preferred by the accused in Criminal Case No. 23 of 1998 pending before the learned Chief Judicial Magistrate, Bhuj, the respondent no. 2 being the complainant.

3. The complaint was lodged by the respondent no. 2 on 3rd August, 1997 alleging therein that the complainant, who is a practising Doctor, had placed an order for supply of one Sonography machine and a printer with the accused on 14th September, 1996 and had paid a sum of Rs. 1,50,000/= by way of advance. The accused delivered the sonography machine on 24th October, 1996 which was received by the complainant, however, the said machine was found to be second-hand and the accused had failed to supply the brand new machine, as was understood. Further, the machine supplied by the accused was not functioning properly and inspite of repeated requests neither the same was replaced nor was it repaired. Besides, the accused failed to deliver the Printing machine till the date of the complaint. Accused is thus alleged to have committed offence punishable under Section 406 and 420 IPC. The police has made investigation in respect of this matter and has submitted the chargesheet before the learned Magistrate.

4. Mr. Karia has contended that the complaint lodged against the applicant is false and vexatious. He has disputed the facts stated in the complaint and has submitted that in fact the machine was received by the accused pursuant to the order placed by the complainant and he had also delivered the machine to the complainant in proper condition, however, because the complainant did not possess necessary knowhow, he was not in a position to operate the said machine. He has further submitted that on 3rd January, 1997, the accused had delivered the Printer to the complainant, however, the complainant refused to receive the said printer. The accused was ready and willing to deliver the printer to the complainant at all relevant times and even today, he is ready and willing to deliver the printer to the complainant. Mr. Karia has, therefore, submitted that no offence has been made out against the applicant-accused. The complaint has been lodged with a view to pressurizing the accused to repay the amount paid by the complainant to the accused alongwith interest. Thus, the complaint has been lodged with an ulterior motive and is, therefore, required to be quashed and set-aside. Mr. Karia has relied upon several documents and correspondence annexed to the application and has submitted that the intention of the accused to deliver the goods ordered, at all relevant times, is established and question of committing offence does not arise.

I am afraid I am unable to accept the contentions raised by Mr. Karia. It is not disputed that an order for supply of Sonography machine and a Printer was placed with the accused and an advance was also paid to the accused, as alleged. However, going through the correspondence annexed to the present application, it cannot be said that the complainant had raised dispute regarding the quality of the machine months after its delivery. It does appear that from the date of the installation, the complainant had some complaints in respect of the quality of machine. Further, it is not disputed that on 3rd January, 1997, the accused had visited the complainant, however, whether the accused had delivered the printer on 3rd January, 1997 and whether the complainant had refused to receive the said Printer, is a matter of evidence.

5. The complaint, therefore, cannot be quashed as prayed for. Application is, therefore, dismissed. Rule is discharged. Mr. Karia requests that interim relief granted to the applicant be continued for a period of six weeks so as to enable him to approach the higher forum. Request is granted. The interim relief made earlier shall continue to operate till 8th February, 1999.

Prakash*